AL.2.1989-146

CHILD WELFARE IN PROGRESS

nformation Guide To The Child Welfare Act

Unit VI

Joint Guardianship
Private Guardianship
Adoption

Alberta
SOCIAL SERVICES

DDN 87085-49

CANADIANA
APR 11 1989

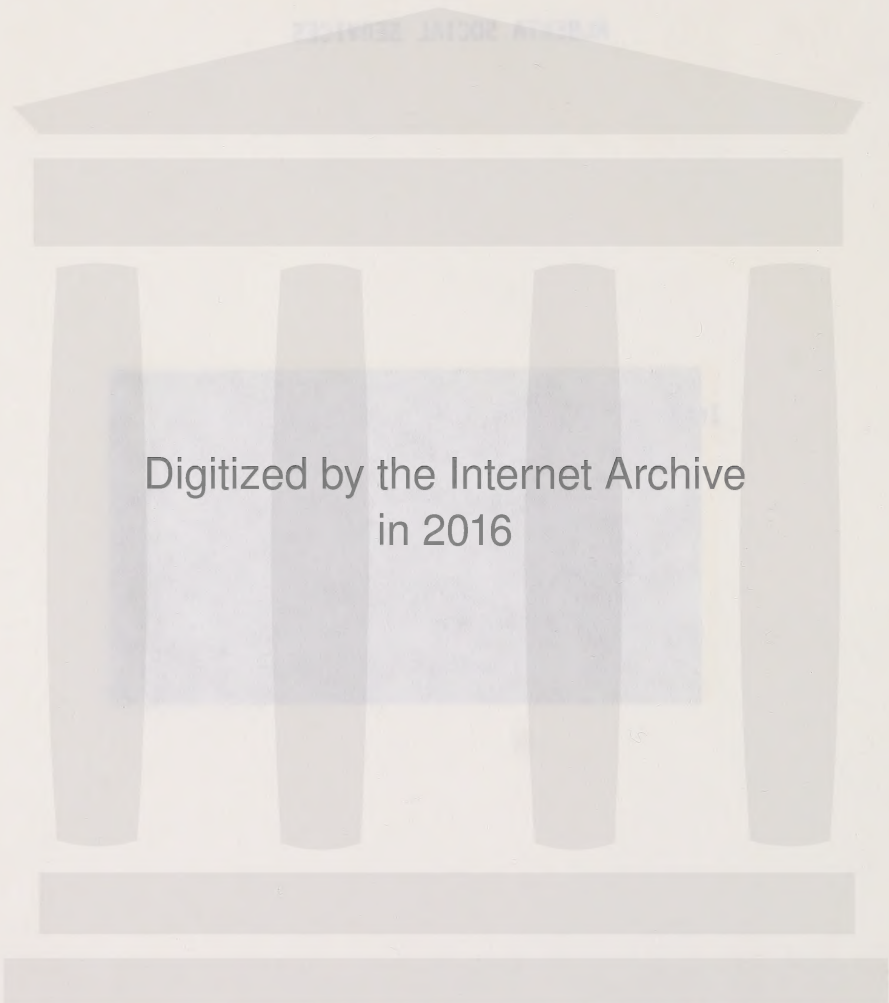
ALBERTA SOCIAL SERVICES

Information Guide To The Child Welfare Act

Unit VI

Joint Guardianship
Private Guardianship
Adoption

CHILD WELFARE IN PROGRESS
December, 1986


Digitized by the Internet Archive
in 2016

https://archive.org/details/childwelfareinpr06albe_0

ACKNOWLEDGEMENTS

This manual is the result of input and written contributions from a broad range of Departmental staff. The Child Welfare Implementation Project is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

The Child Welfare Implementation Project would also like to thank the following staff of Alberta Social Services who have contributed to the writing and technical development of the Orientation Manual:

Hugh Nicholson - Project Manager, Child Welfare Implementation Project Staff Development Sub-Project.

Jim Barnet - Writer, Human Resources of Canada.

Joyce Hanley - Training Officer, Training Resources Corporate Staff Development.

Alyson Lavers - Regional Representative, Central Region, Alberta Social Services

Judy Maggs - Regional Representative, Northeast Region.

Ann Moore - Regional Planner, South Region, Alberta Social Services.

Danny Roy - Regional Staff Development Coordinator, Northeast Region.

PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,

Helen Wentz

Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute video-tapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;

2. An outline of the information contained in the particular module;

3. Critical information highlighted (enclosed in boxes) in each section;

4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and

5. A reference list at the end of each section of the module.

THE INFORMATION GUIDE SERIES

UNIT I

1. BACKGROUND INFORMATION
2. PHILOSOPHICAL PRINCIPLES
3. MATTERS TO BE CONSIDERED
4. MAJOR INNOVATIONS
5. DEFINITIONS

UNIT II

1. PRELIMINARY INTERVENTIONS
2. CONFIDENTIALITY
3. AGREEMENTS

UNIT III

1. SUPERVISION ORDERS
2. APPREHENSIONS
3. SERVICE FOR COURT AND RIGHTS OF APPEARANCE

UNIT IV

1. CHILDREN'S GUARDIAN AND DIRECTORS
2. TEMPORARY GUARDIANSHIP
3. PERMANENT GUARDIANSHIP

UNIT V

1. CONFINEMENT OF AN APPREHENDED CHILD
2. SECURE TREATMENT CERTIFICATE
3. SECURE TREATMENT ORDER
4. APPEAL PROCESS

UNIT VI

1. JOINT GUARDIANSHIP
2. PRIVATE GUARDIANSHIP
3. ADOPTION

UNIT VII

YOUNG OFFENDERS ACT

1. DEFINITIONS AND PRINCIPLES
2. PRE-COURT PROCEEDINGS
3. ROLE OF THE COURT
4. POST-COURT PROCEEDINGS

UNIT V

SECTION 1

Joint Guardianship	This section covers the definition tion of joint guardianship, the conditions that must be met in order for joint guardianship to be granted, and why it is important.

SECTION 2

Private Guardianship	This section covers the definition of private guardianship, the conditions that must be met in order for private guardianship to be granted, and why it is important.

SECTION 3

Adoption	This section covers the definition of adoption, its meaning, and the process and conditions through which a child can be adopted.

SECTION I: JOINT GUARDIANSHIP

The joint guardianship section of the legislation is the vehicle through which former care givers can continue their relationship with children.

Joint guardianship is a shared responsibility between a private individual and the Children's Guardian, for the guardianship of a child under a permanent guardianship order or agreement.

Some children who come under permanent guardianship orders experience a number of residential placements during the period in which they are under the care of Alberta Social Services. In many of these placements children often develop a close relationship with the care giver (i.e. foster parents, group home staff, etc.). Unless there is a mechanism through which these relationships can be maintained, they will often break down once children leave the home.

Understandably, it is usually in the best interest of the children to maintain some level of involvement from the people who have had a significant impact on their lives.

The provisions in the Child Welfare Act for joint guardianships have the flexibility to allow people who wish to assume guardianship responsibility to determine with the Children's Guardian the guardianship role that they wish to assume.

The following is a brief outline of this legislation:

Any adult may make an application in the prescribed form to be appointed as a guardian of the child jointly with the Children's Guardian.

The applicant shall serve notice of the time and place at which the application is to be heard on the Children's Guardian not less than 30 days before the date of the hearing.

(C.W.A. Section 34 (1) & (2))

The Court may make an order appointing a person as a guardian of a child jointly with the Children's Guardian if it is satisified that the:

a. person is capable of assuming and willing to assume the responsibility of joint guardianship of the child,
b. person has had a significant and continuing relationship with the child,
c. child has consented, if the child is twelve years of age or over,
d. Children's Guardian is of the opinion that it cannot reasonably be anticipated that the child will be adopted within a reasonable time, and
e. appointment of that person as a joint guardian will be beneficial to the child.

(C.W.A. Section 34 (3))

If the Court makes an order the Children's Guardian:

a. may exercise all of the authority of a guardian of the child to the exclusion of the other guardian, and
b. has sole authority to consent to the adoption of the child.

(C.W.A. Section 34 (4))

If the Court makes an order appointing a joint guardian and if the Children's Guardian and the joint guardian have been unable to negotiate differences in that agreement and have not complied with the terms of the agreement then the Court may make an order prescribing:

a. the access that will be provided between the joint guardian and the child, and
b. the conditions under which the Children's Guardian shall consult with the joint guardian on matters affecting the child.

(C.W.A. Section 34 (5))

The role of the Child Welfare Worker in a joint guardianship application may be to make recommendations to the Children's Guardian as a concerned and interested professional or provide information to both the Court and Children's Guardian and/or make presentations to the Court as a representative of the department.

The Child Welfare Worker receives notification that an application has been made for joint guardianship and would be required to submit information regarding the appropriateness to the Regional Children's Guardian.

They may also be required to appear in Court to present evidence.

The Children's Guardian would negotiate the guardianship role to be provided by the private party.

Example

A thirteen year old boy, John, has been in a foster home for the past two years. He is under a permanent guardianship order and has formed a close relationship with his foster father. Although John knows that the foster parents are not his natural parents he constantly refers to them as his parents. Lately, John has become involved in a number of thefts and may be sent to an institution under the Young Offenders Act.

The foster parents wish to keep in contact with John and hope that he will be able to return to their home upon his release. John also wants the foster parents to be involved in decisions affecting him in the future, because he feels they are the people who best understand him.

The foster parents believe that joint guardianship would help maintain their involvement, and also increase the likelihood of John's return to their home. Adoption was discussed with the foster parents; however, at this point they were hesitant because of John's recent delinquencies.

Review Of Joint Guardianship

If the Court makes an order appointing a joint guardian, any party - the Children's Guardian, the joint guardian, or the child, if over 12 years of age - may apply to the Court in the prescribed form at any time for a review of the order.

The applicant shall serve notice of the date and place at which the application for a review is to be heard on the Children's Guardian, the joint guardian and the child (if the child is 12 years of age or over) not less than five days before the date of the hearing.

The Court may on hearing the application and in accordance with the Act (Section 34) continue, vary or terminate any order previously made.
(C.W.A. Section 35)

In joint guardianship the child welfare worker may play various roles, depending upon the situation:

- explaining the joint guardianship to potential applicants and helping them prepare for the court process,
- exploring joint guardianship with the child and representing the child's interests in court,
- assessing an application for joint guardianship and making representation to the Children's Guardian, and
- notifying the Regional Children's Guardian of a joint guardianship application.

Questions:

1. Does the Children's Guardian have "veto" power in a joint guardianship order?

2. Can a Child have more than one joint guardian?

3. If there is a conflict between the joint guardian and the department, who has the final authority on the decision?

4. Can a care giver apply for a joint guardianship order without involving the Child Welfare worker?

Answers:

1. No. The Children's Guardian does not have the power of "veto" per se. However, the court is required to consult the Children's Guardian in order to see if he/she feels such an order would be in the best interests of the child.

2. Yes. There is no legal limit to the number of joint guardians. Indian bands may also apply for joint guardianship.

3. The Children's Guardian has the authority to make the decision; however, every attempt should be made to resolve the matter first with the joint guardian(s).

4. Yes. However, the Children's Guardian must be notified.

References

1. Alberta Social Services
Handbook Child Welfare In Progress
Tab 03 - pages 50-60

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress

SECTION II: PRIVATE GUARDIANSHIP

A private guardianship order is an application by a private person(s) to become the guardian(s) of a child. This guardianship can be shared with any other guardian the child may have, or the Court may terminate the guardianship of any other individuals at the time of granting a private guardianship order (Section 54(2) C.W.A.). Usually other guardianship orders are terminated, including guardianship under the Children's Guardian.

This order provides an opportunity for any adult who has had continuous care of a child for more than six months (and if the child or the applicant resides in Alberta) to assume the primary guardian role for the child.*

Private Guardianship orders provide a legal mechanism for:

- Native persons in recognizing custom adoptions,
- foster parents who have had long term care of foster children and where adoption is inappropriate, and
- step-parents or blood relatives where it may not be in the best interests of the child to sever all ties with the biological parent.

---

* If the Court is satisfied that it is in the best interests of the child, it may waive both of the above requirements.

The following is the legislation related to private guardianship:

Applications cannot be made if the child is the subject of a temporary guardianship order.

Applications cannot be made if the child is the subject of a permanent guardianship order unless the appeal period for the order has expired.

Applications can be made where the child is in permanent care of the Department.

(C.W.A. Section 49)

Applicants must serve notice of the hearing not less than thirty (30) days before the date of the hearing:

1. on the guardian of the child
2. on the child (if the child is 12 years of age or over)
3. on a director if the child is not in care of the department
4. on the Children's Guardian, or his/her delegate if the child is under the guardianship of the Children's Guardian.

The Court may choose to amend or alter these requirements.

(C.W.A. Section 51)

The Court, on hearing an application may require the applicant to provide the Court with a report in the prescribed form and prepared by a qualified person.

1. If the Child is a subject of a permanent guardianship agreement or order, the report will be completed by a child welfare worker.
2. In all other cases the report must be prepared by:
   a. a registered social worker
   b. a registered psychologist
   c. a person who holds at least a Bachelor's degree in social work from an accredited university or school
   d. a person who is qualified by virtue of academic qualifications or experience or a combination of both.

(C.W.A. Section 51(1)(2) & (3))

If the child is not the subject of a permanent guardianship agreement or order, the applicant shall serve a copy of the report on a director not less than 2 days before the report is provided to the Court.

Upon being served with such a notice a director may conduct an investigation with respect to the proposed guardianship and may make representations to the Court at the time the application is heard.

The content of the report will contain indications of:

1. Applicant's suitability as a guardian
2. Applicant's willingness and ability to assume responsibility as a guardian
3. Whether or not the appointment is in the best interests of the child.

(C.W.A. Section 51)

Once the private guardian is appointed, guardianship cannot be revoked except through the normal court appeal process or through proceedings under child protection legislation (i.e., application for permanent guardianship order due to neglect or abuse).

Example

Maria is a seven year old who has been living with her grandmother since her birth. Maria's mother was very young when she had Maria, and since then, she has been unable and unwilling to care for Maria. Maria sees her mother occasionally, and has now learned that her mother is living with a man who has physically abused Maria.

Maria's grandmother wants to protect Maria from this man, and is worried that her daughter will now want to take her back. Because of this she has contacted Alberta Social Services. The child welfare worker advised that in order to be in a better legal position to protect Maria, her grandmother should apply for private guardianship under either the Child Welfare Act or the Domestic Relations Act. The child welfare worker suggested that consideration be given to the Domestic Relations Act (rather than the Child Welfare Act) because the order would come from a higher court.

PRIVATE GUARDIANSHIP

Questions:

1. Must a child be under permanent guardianship for a private guardianship order to be issued?

2. Can a private guardianship order be cancelled by the department if they find the private guardian(s) unsuitable after the order has been issued?

Answers:

1. No. Private Guardianship can be given without the child first being under a permanent guardianship order. This would be consistent with the principle of least intrusiveness.

2. No. The order can be terminated only by obtaining a permanent guardianship order. This order would need to come through the same process as any other child protection case.

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03 - pages 79-82

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress
pages 13-14

SECTION III: ADOPTION

In this section we will discuss adoption, its meaning, and the process and conditions through which a child can be adopted.

By definition, adoption, ie: "to take into one's own family by legal process and treat as one's own child", is a permanent move on the part of the adopting parent and on the part of the person(s) or agencies giving the child up for adoption, and needs to be given full thought and consideration.

This has implications for child welfare workers in that investigations and discussions need to be thorough and candid.

All adoption orders are issued though a petition made by a director to the Court of Queen's Bench. In this part of the manual both ward and private adoption petitions will be examined. In addition a number of issues related to adoption orders will also be described. They include:

- the Adoption Registry
- disclosure of information
- publication of adoption
- financial assistance.

Adoption Petition Process

All adoptions are granted through a petition submitted to a director. Once a director receives the petition he is required to complete an investigation, and submit both the report of the investigation and the adoption petition to the Court of Queen's Bench within six (6) months. The adoption petition must also be accompanied by affidavits disclosing:

a. the name, date of birth, sex, and parentage of the child to be adopted, so far as is known;
b. the age, address, marital status and occupation of each petitioner;
c. the relationship, if any, of the petitioners to the child; and
d. the fitness of each petitioner to adopt the child.

(C.W.A. Section 56.1 & 56.2)

When the child is the subject of a permanent guardianship order or agreement the adoption cannot be granted unless a director submits in writing a statement indicating that, in the opinion of the director, the petitioner is fit to have the care and custody of the child.

In addition to the above, the consent of the guardian and the child (if 12 years of age or over) is required in order for the adoption order to be granted.

(C.W.A. Section 56.3 & 60 (1))

Once the adoption order is granted the child will be legally considered a full member of the adoptive family.

Adoption of Children Under Permanent Guardianship

Each year the department receives a large number of applications from Albertans to adopt children under permanent guardianship orders. Usually the number of applications is far in excess of the new born babies available for adoption. Understandably the waiting list also varies in length from one year to the next.

Applicants are often eager to know how long they will need to wait in order to receive a child. Through having this information, they feel that they can better plan for the care of the child. Also, because the adoption process is new to them, it is easy to become frustrated with both the procedures and any delays beyond the time period suggested by the social worker. Because the waiting periods vary a great deal and because a commitment to a specific waiting period may increase the frustration of potential adoptive parents, workers are requested to focus more on the factors affecting the waiting period rather than offering a specific time span.

Due to the long waiting period, the department is finding that normally hard-to-place children (e.g. older children, handicapped children, etc.) are more frequently adopted by people on the wait lists and standby lists. Therefore, it is important to discuss with the applicants the possibility of adopting one of the harder-to-place children.

Private Adoptions

If a guardian of a child wishes to surrender his/her child to a private individual, rather than Alberta Social Services, the person(s) who receive the child is required to notify a director within thirty (30) days of receipt of the child. Also, if under Section 64(3) of the legislation, a person adopts the child of their spouse, the spouse continues to be a guardian of the child and the child is still, by law, considered to the a child of the spouse.

(C.W.A. Section 56.4 & 64 (3))

Adoption Of Native Children

Special conditions should also apply when placing Native children for adoption. These should include:

- In some cases, consideration of a private guardianship, in place of an adoption order. This may more appropriately reflect the Native adoption customs.

- When adoption is considered as part of the case plan, communication of this to a chief, council or designate.

- Placement in accordance with the priority placement guidelines.

- Adoption does not affect the child's Indian status. Adoptive parents should be made aware of this by the adoptions worker and encouraged to exercise these rights.

- When completing home studies for Native children, comments should be made regarding the applicant's ability and willingness to ensure the child maintains his cultural heritage.

A more detailed outline of the issues involving the adoption of Native children is included in the departmental manual "Native Child Welfare Services: Practice Guidelines."

Adoptions Registry

Applications can be made for the disclosure of the identity of the adopted person, his biological mother, his biological father or his siblings to the Minister by:

a. the adopted person if he has reached the age of 18 years,
b. the biological mother of the adopted person,
c. the biological father of the adopted person,
d. an adult sibling of the adopted person.

(C.W.A. Section 65 (1))

This information is kept in a registry by the Minister. Upon receipt of an application, the Minister shall enter the name of the applicant in a record kept for this purpose, and shall examine the record to see if there is a match. The match determines:

a. if the applicant is an adopted person, whether or not their biological parents have been entered,
b. if the applicant is the biological mother or biological father of an adopted person, the name of the adopted person is entered, or
c. if the applicant is a sibling of an adopted person, if the name of the adopted person is entered.

(C.W.A. Section 65 (2))

If the applicant is an adopted person and the Minister determines that the information sought is available in the registry, the Minister shall disclose the identity of each to the other person(s) involved.

(C.W.A. Section 65 (4) (5) & (6))

If the applicant withdraws his application, the Minister shall remove the name from the registry.

(C.W.A. Section 65 (7))

If the Minister cannot locate a person whose name is entered in the record (registry), the Minister shall provide information only to the person he can locate.

On being advised by an adopting parent that an adopted child has died before attaining the age of 18 years, the Minister shall enter the name of the child in the record and the fact of his death.

(C.W.A. Section 65 (7) (8) & (9))

Advertising

With the written consent of a director the Department may, on occasion, advertise that a child or children in custody of a director is/are available for adoption. The Department may also publicize an announcement of a court order for adoption or publicize the approval of a petition for a specific petitioner.

Questions

Please indicate whether each of the following is true or false:

	True	False
1. Only adopted children eighteen (18) years of age or older can enter their name on the adoption registry.	____	____
2. If a guardian wishes to surrender his/her child to a private individual for adoption, a director must be notified thirty (30) days prior to placement.	____	____
3. A director is not required to complete an investigation on private adoption petitions.	____	____
4. Indian chiefs or council members should be notified if the case plan for a Native child in their band indicates the possibility of adoption.	____	____
5. Adoption petitions must be submitted to the court within six (6) months of the application.	____	____

Please insert the correct answer in the blanks for each of the following statements:

6. Adoption petitions are submitted to the Court of _____.

7. An adoption petition for a child under permanent guardianship cannot be approved unless the director submits an affidavit in writing, indicating:

_____

_____

_____

8. If a child under guardianship is over _____ years of age, he must consent to the adoption in order for the petition to be granted.

Answers

1. True

2. False. Notice is required within thirty (30) days of the placement.

3. False. A director must complete the investigation.

4. True

5. True

6. Court of Queen's Bench

7. In the opinion of the director the petitioner is fit to have care and custody of the child.

8. 12 years of age

References

1. Alberta Social Services
Handbook - Child Welfare In Progress
Tab 03 - pages 83-93

2. Alberta Social Services
Native Child Welfare Services Practice Guidelines
Child Welfare In Progress
Pages 14-15

3. Alberta Child Welfare Act